

O/a 1-9-85

IN THE SUPREME COURT OF FLORIDA

CASE NO. 65, 296

IN RE: ESTATE OF RALPH JAMES EDELL, JR.,  
Deceased,

LISA EVERED and JOHN E. EDELL, as  
Co-Personal Representatives,

Petitioners,

v.

MARY JUNE EDELL,

Respondent.

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PETITIONERS' REPLY BRIEF

ON ORDER ACCEPTING DISCRETIONARY JURISDICTION  
TO REVIEW A DECISION OF THE DISTRICT COURT  
OF APPEAL OF FLORIDA, THIRD DISTRICT

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS .....	ii
ARGUMENT .....	1
CONCLUSION .....	3
CERTIFICATE OF SERVICE .....	4

TABLE OF CITATIONS

<u>CASES</u>	<u>Page(s)</u>
<u>Del Vecchio v. Del Vecchio,</u> 143 So.2d 17 (Fla. 1962).....	1, 2
<u>Estate of Roberts,</u> 388 So.2d 216 (Fla. 1980).....	2
<u>Potter v. Collin,</u> 321 So.2d 128 (Fla. 4th DCA 1975), <u>cert. denied</u> 336 So. 2d 1180 (Fla. 1976).....	2, 3
 <u>STATUTES</u>	
Section 732.702, Fla. Stat. (1983).....	1, 2

## ARGUMENT

This case presents a stark clash of philosophies: June thinks that antenuptial agreements, by and large, are bad and should be looked at suspiciously by the courts; we think that such agreements, by and large, are good and should be viewed favorably by the courts. In deciding this case, this Court will necessarily determine Florida's response to that philosophical dispute. For that reason, the case is important not only to the litigants here; it will profoundly affect the degree to which antenuptial agreements can be relied upon in this State.

In Del Vecchio v. Del Vecchio, 143 So.2d 17, 20 (Fla. 1962), this Court stated that antenuptial agreements are "in harmony with the public policy and often conducive to marital tranquility . . . ." Since then, numerous other cases (cited in our Initial Brief) have also demonstrated judicial favor to such agreements, and the Legislature, in adopting Section 732.702, Fla. Stat. has shown a similar attitude. The unmistakable trend is to uphold such agreements in most cases.

Obviously, we applaud that trend, and urge this Court to continue and confirm it in this case. We reject, however, June's suggestion that we believe that "Section 732.702(2), Fla. Stat. validates all antenuptial agreements . . . ." (Answer Brief, p. 13). Clearly, if a wife (or husband) is able to show fraud, or deceit, or duress, he or

she should be entitled to sustain an attack on an agreement so obtained. This Court has so held in Estate of Roberts, 388 So.2d 216 (Fla. 1980), and with that holding we have no quarrel. What we cannot accept is June's contention that a deceased spouse should be presumed to have engaged in fraud, or deceit, or duress. Neither the cases nor common sense demand such a rule, and due process will not allow it.

It is telling that June's brief relies virtually exclusively on Del Vecchio - a case which has been legislatively "supplanted" by Section 732.702, Fla. Stat. - and on concepts of marital (or pre-marital) "confidentiality" taken from 17 Fla. Jur., Husband & Wife - a title not even continued in Fla. Jur. 2d. Apparently, June would return to an era when men were presumed to have the power to dominate and trick women. Such a presumption, however, has long since been discarded. As stated by Judge Downey in Potter v. Collin, 321 So.2d 128, 132 (Fla. 4th DCA 1975), cert. denied 336 So.2d 1180 (Fla. 1976):

In this day and age there is no longer any suggestion that women are unequal and in need of the protective arm of the court. As Professor Gamble puts it:

" . . . even though the male's supposed intellectual dominance over the woman is seen throughout the law of antenuptial agreements as requiring legal protection for the weaker female, this premise is contrary both to the contemporary concept of the equality of women and to the freedom of mature parties to chart the rights and liabilities of their marriage relationship."

No longer will the courts in viewing antenuptial contracts invariably begin "with the realization that between persons in the premarital state there is a mystical, confidential relationship which anesthetizes the sense of the female partner."

(Footnotes omitted; emphasis added:)

Here, the evidence is clear that June knowingly, willingly and voluntarily agreed to the antenuptial contract she signed, and she should, therefore, be held to her bargain. Had she died first, her beneficiaries would have had the benefit of the agreement. Ralph's beneficiaries are entitled to no less.

#### CONCLUSION

The opinion and judgment of the Third District Court of Appeal should be quashed with directions that the cause be remanded to the trial court for reinstatement of the trial court's final judgment.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Initial Brief on Merits was mailed this 26th day of November, 1984 to Joseph Jennings, Esq., Suite 900, Brickell Center, 799 Brickell Place, Miami, Florida 33131.



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